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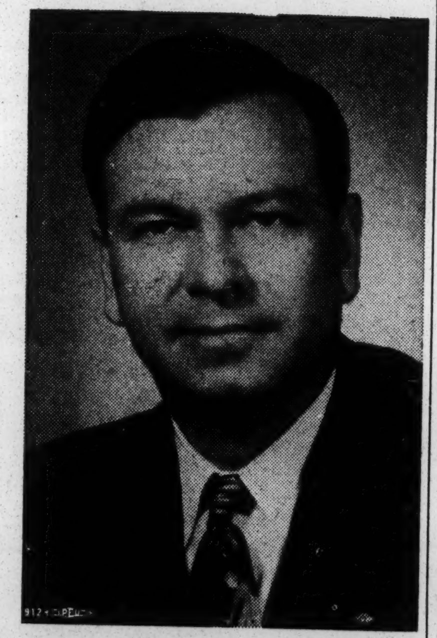
N.C. Senator Raps Supreme Court In Talk Before Harvard Law Group

Herman Talmadge Says:



Last Friday afternoon, April 29, I flew to Jacksonville, Florida, and was met at the plane by Senator Alva J. Hopkins, Jr., who carried me to Folkston to address a newly-formed Charlton County Chamber of Commerce.

We arrived in Folkston about the middle of the afternoon and I wanted to see something of the tremendous forest fires which were raging in the county.

Swamp Fires Charlton County is in extreme Southeast Georgia and is almost 100 per cent in timber. A large portion of the Okefenokee Swamp lies within the county and for the last year, because of the unprecedented drought, the swamp itself has been burning. From time to time the fire breaks out of the swamp and damages timber in the county. It is believed that the fire originated in the swamp from lightning. Muck and woods in the swamp have been burning fiercely off and on for about a year and some of the flames leap 75 feet into the air.

Says Justice Dispensed On "Personal Notions" Rather Than On Law

"Revolutionary Decisions" Have Usurped Legislative Powers and Legal Doctrines

NEW YORK, N. Y.—United States Senator Sam J. Ervin, of North Carolina, speaking here last week before one of the nation's outstanding legal groups, delivered the sharpest criticism of the U. S. Supreme Court leveled by a prominent official since last May's decision outlawing school segregation.

The Senator questioned the qualifications of individual Justices of the high court and said they have been dispensing justice according to "personal notions" rather than under law.

Sen. Ervin delivered the principal address at the annual dinner meeting of the Harvard Law School Association of New York City.

He was an Associate Justice of the North Carolina Supreme Court before he became a senator and has a notable record as both a jurist and an authority on constitutional law.

* * *

Ervin said "revolutionary decisions" of the U. S. Supreme Court in recent years have not only usurped state congressional powers but have also impaired long-established legal doctrines.

It is "high time," Ervin declared, to think about amending the Constitution to make sure that in the future men will be appointed to the Supreme Court because of fitness and "their ability and willingness to subject themselves to the restraint inherent in the judicial process."

"I regret to say . . ." the senator said, "that the course of the Supreme Court of the United States in recent years has been such as to cause me to ponder the question whether fidelity to fact ought not to compel us to remove from the portal of the majestic words, 'equal justice under law,' and to substitute for them the superscription, 'not justice under law, but justice according to the personal notions of the temporary occupants of this building.' "

* * *

Why, Ervin asked, does the Supreme Court "prefer to make constitutions and laws rather than to interpret them?"

The answer, he said, is in the inability or unwillingness of the justices "to subject themselves to the restraint inherent in the judicial system."

This restraint, he said, comes from a mental discipline which en-

(Cont'd on Page 2, Col. 2)

Talmadge Speaks

On his regular television show Monday Evening, May 9th Former Governor Herman Talmadge will talk about the broiler industry in Georgia.

The station is WAGA TV, the time—10 PM. His guests will be Mr. Henry Waters of Gainesville and Mr. Roy Durr of Atlanta.

On Tuesday, May 10th, Talmadge will address a joint civic meeting sponsored by the Chamber of Commerce at Americus, and on Thursday, May 12, the former Governor will be in Columbus to speak to the Georgia Tuberculosis Ass'n at 8 PM.

He will wind up the week by speaking to the Georgia Forestry Ass'n at Augusta at 12:30 PM, Friday, May 13, and another speech that nite to the East Georgia Log Rollers Ass'n —W.O.W.—at Crawfordville at 7:30 PM.

Georgia Farm Receipts Show Downward

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Because of Georgia's unprecedented progress in forest fire protection, the State was able to send forty or fifty pieces of heavy equipment from different locations to help fight the fire. Because of high winds even that much equipment was not able to bring the blaze under control.

Hundreds and hundreds of thousands of dollars in damage have been done to forests of Charlton County and the Northern part of Florida.

Late Start Our timber resources are our greatest natural assets, and we should have started protecting them 25 or 30 years prior to the time we did. If we had done so, wood products industries would now be employing approximately half a million people and bringing into our State about one and one-half billion dollars a year. We have, however, seen income from manufactured furniture and other forest products increase from about 300 million dollars in 1948 to about 750 million dollars a year in 1954.

Virtually all of the people in Charlton County expressed great concern about the forest fires raging there and were all turning out en masse to assist the Forestry Commission and others in fighting the conflagration.

Change Wrought This is quite a transition from 20 or 25 years ago when people wilfully burned forests and very little attention was turned towards protecting our greatest natural resource—our forests. Every person in our State should do everything possible to prevent forest fires and should fight against their occurrence.

Notwithstanding the forest fires and the number of persons out helping fight them, almost 200 people turned out for an organizational meeting there to help form a Chamber of Commerce.

Charlton County has grown in recent years, particularly along the arterial highways such as U. S. #1. They have a considerable tourist industry and related trade in the county. They are seeking to expand in this field as well as in promoting industrial development in the county.

Herman E. Talmadge

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To
THE STATESMAN

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Georgia Farm Receipts Show Downward Trend In January and February

Farmers in the seven Southeastern States of Alabama, Florida, Georgia, Mississippi, Tennessee, and the two Carolinas in the first two months of 1955 received an estimated $417,924,000 for their products, including returns of $239,917,000 from crops and $178,007,000 from their livestock and its products, the Atlanta field office of the U. S. Department of Commerce announced.

Receipts in North Carolina totalled $49,583,000, South Carolina, $22,601,000, Georgia, $58,074,000, Florida, $119,914,000, Tennessee, $68,691,000, Alabama, $37,017,000, and Mississippi, $62,044,000.

Somewhat in keeping with trends in the nation as a whole, cash income in the first two months of the year was down in all of the Southeastern States as compared with the corresponding period last year, except in Florida where an 8.1 per cent rise was registered, the third largest rate of uptrend in the United States as a whole. The gain there was due to an advance of more than $11,000,000 in receipts from crop products.

Elsewhere in the region, however, sharp declines occurred. Mississippi experienced a 20.9 per cent drop from last year, South Carolina, 17.6 per cent, North Carolina, 13.1 per cent, Tennessee, 10.1 per cent, Alabama, 9.6 per cent, and Georgia, 8.3 per cent.

The average for the nation as a whole was a 5.3 per cent downtrend.

Other than in Florida, where returns from crops sent the overall income soaring above that of the first two months of 1954, income from crops reflected the biggest downturn in the Southeast. For example, in North Carolina it was off from $21,366,000 in 1954 to $17,854,000 this year, South Carolina, from $13,905,000 to $9,900,000; Georgia, $21,576,000 to $17,131,000, Tennessee, $44,669,000 to $40,351,000, Alabama, $14,675,000 to $11,032,000, and Mississippi, $57,443,000 to $42,906,000.

In Florida, the increase in crop returns was from $89,709,000 to $100,748,000.

On the other hand, generally speaking, losses from livestock and its products sales in the area were relatively light. In South Carolina, they were only from $13,527,000 to $12,701,000, Georgia, $41,723,000 to $40,943,000, Florida, $21,258,000 to $19,171,000, Tennessee, $31,734,000 to $28,340,000, Alabama, $26,274,000 to $25,985,000, and Mississippi, $20,963,000 to $19,138,000.

In North Carolina, the reduction in livestock returns was a little sharper, or from $35,708,000 to $31,729,000.

The figures were compiled by the Agricultural Marketing Service of the U. S. Department of Agriculture. They showed that only eight of the forty-eight states could point to increases in the first two months of this year—Maine, Minnesota, North Dakota, Kansas, Florida, Idaho, Washington, and California.

Amend the Constitution

In January 1953 when the present Administration assumed control over our Government there were many who anticipated an effort by the party in control to stop the trend toward centralization of power in the Federal Government.

There was reason for this expectation. The platform of the Republican Party had expressed its belief in the right of the State to order and control its own domestic institutions, and the platform affirmed that the power reserved to the State is essential to the maintenance of our federal republic.

However, there has been no real effort to reestablish the power of the State, except the restoration of the tidelands.

If you will read the messages sent by the President to the Congress since the first of January, 1955, it will be found that many of the recommendations are not in the interest of the States, and, if enacted into law, will actually strengthen and extend the powers of the national government. It follows as the night the day that the reserved powers of the States are diminished to the same extent that the federal powers are increased.

It seems too clear for words that there will be no real effort made by the Congress to correct this situation by legislation, and this may account for the effort being made

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Quimby Melton, Jr. Honored By "Citizen Of Year" Award

He's a chip off the old block, and is well on the road toward being in the same league with his noted father in the newspaper profession. That's what they are saying about Quimby Melton, Jr., editor of the Griffin Daily News.

Latest evidence pointing in that direction was seen the other day when the Association County Commissioners of Georgia named him "Georgia Citizen of the Year" for 1955. Reasons for the high honor: For his "unselfish and exemplary civic service;" for editing a "free and outstanding newspaper," and for being "fearless, positive, forward-looking, fair and staunchly faithful to the traditions of his native state."

Nor is this the first important award to come his way. For instance, the 33-year-old editor previously received two national awards from the Freedoms Foundation for his editorials on what it means to be an American, as well as awards from the Salvation Army and the Council of Christians and Jews for his editorial writings.

A graduate of the University of Georgia, Melton was a combat soldier during World War II. He saw action in New Guinea and in the invasion of the Philippines at Luzon; was wounded and received the Purple Heart.

Upon being discharged from the Army, he returned to Griffin to team up with his publisher-father in putting out one of Georgia's better daily newspapers. Melton currently is vice president of the Georgia Press Assn., and is a member of the State Programs Study Committee.

But winning well-deserved recognition for public service through good newspapering didn't begin in the Melton family with Quimby, Jr. His father has been doing it for years. In fact, the popular author of the widely-read "Good Evening" column just recently was honored in his home town in recognition of 50 years of public service to his community, his county and his state.

The Citizen of the Year award is based upon service to the public and to governments of the state, counties, and municipalities. No person holding elective or appointed governmental position on a full-time employment basis is eligible.

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Tree Farming

From—THE OGLETHORPE ECHO

Tree farming is receiving more and more attention as time passes. In this country there are several tree farms devoted exclusively to the production of forest products.

There is a news story in this paper concerning the number of pine seedlings set out in Oglethorpe county this season. Nearly a million and a half.

The bulk of these seedlings were set out by holders of large tracts for pulpwood production.

But it is also encouraging to note that many small plantings were made by private landowners and boys and girls belonging to 4-H and FFA clubs.

This is an encouraging sign. The young people are learning the value of trees and the part they play in, not only in producing revenue, but their importance in water and soil conservation. And this is a question that must be solved if successful farming is to continue in this section.

We can think of no finer investment than to set out pine seedlings. A fifteen-year-old pine tree in this section is worth one dollar. They can be planted on our poorest soils that are unprofitable for other crops. Such land can be bought cheap. A man, say 30 years of age, could plant

Amend the Constitution

(Continued from Page 1)

by both Senators and the Congressmen to secure the approval by Congress of various suggestions for amending the Constitution.

If the trend toward centralization of power in the federal government is continued "the States will have a very small voice in the affairs of their own government. That is not what the framers of the Constitution intended, but that is the way it has been interpreted." This is the situation in which we find ourselves; we have been led to believe that the Federal Government can do everything, and especially that it can relieve us of the burdens and ills that are a part of our every-day life. The result is that many of us are misled into accepting the idea that some relief—maybe temporary, maybe permanent, can be obtained by a surrender of our rights and privileges, and the acceptance of bureaucratic restrictions and limitations. There is no surer way of losing our freedom.

Those members of the Congress who have introduced proposed amendments apparently believe that amendment of the Constitution is the only way in which the future of our Nation can be protected, and assured. We agree.

The most important of the proposed changes are (1) SJRes. 1—the Bricker amendment to circumscribe the effect of treaties; and (2) SJRes. 2, the Byrd-Bridges proposal to limit Congressional appropriations to a sum no greater than estimated federal revenues, except in time of war or national emergency.

These proposals are sound. If adopted—and they will be adopted if the people are given an opportunity to approve them—they will preserve and strengthen the rights reserved in the Constitution to the States or to the people. The Bricker and the Byrd-Bridges amendments must be adopted if we are to defeat the efforts of those whose sole aim is to impose their will upon the American people.

A Southern Principle

From—SAVANNAH MORNING NEWS

When the Confederate States surrendered their army on April 26, 1865, it seemed possible that much of the tradition and principles for which the War Between the States was fought would pass into oblivion. Decades after that war, it was often interpreted by some ignorant persons as a battle which was fought to terminate slavery on

ernment, they inserted in the Constitution of the United States the doctrine of the separation of governmental powers.

"In so doing, they utilized the doctrine of the separation of powers in a twofold way. They delegated to the Federal Government the powers necessary to enable it to discharge its limited functions as a central government, and they left to each state the power to regulate its own internal affairs. It was this use of the doctrine of the separation of powers which prompted Chief Justice Salmon P. Chase to make these memorable remarks in his opinion in TEXAS vs WHITE:

> "Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. THE CONSTITUTION, IN ALL ITS PROVISIONS LOOKS TO AN INDISSOLUBLE UNION, COMPOSED OF INDESTRUCTIBLE STATES."

"In their other utilization of the doctrine of the separation of powers, the members of the Convention of 1787 vested the power to make laws in the Congress, the power to execute laws in the President, and the power to interpret laws in the Supreme Court of the United States and such inferior courts as the Congress might establish. Moreover, they declared, in essence, that the legislative, the executive, and the judicial powers of the Federal Government should forever remain separate and distinct from each other.

* * *

"The members of the Convention of 1787 did not put their sole reliance upon the doctrine of the separation of governmental powers in their effort to forestall the exercise of arbitrary power by the

ed States" would "be uncontrollable and remediless."

"Alexander Hamilton rejected these arguments with this emphatic assertion: "The supposed danger of Judiciary encroachments . . . is, in reality, a phantom." He declared, in essence, that this assertion was true because men selected to sit on the Supreme Court of the United States would "be chosen with a view to those qualifications which fit men for the stations of Judges", and that they would give "that inflexible and uniform adherence" to legal rules "which we perceive to be indispensable in the courts of justice."

"In elaborating this thesis, Alexander Hamilton said: "It has been frequently remarked with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived, from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence, it is that there can be but few men in . . . society, who will have sufficient skill in the laws to qualify them for the station of Judges."

"By these remarks, Hamilton assured the several States that men selected to sit upon the Supreme Court of the United States would be able and willing to subject themselves to the restraint inherent in the judicial process. Experience makes this proposition indisputable: Although one may possess a brilliant intellect and be actuated by lofty motives, he is not qualified for the station of a judge

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We can think of no finer investment than to set out pine seedlings. A fifteen-year-old pine tree in this section is worth one dollar. They can be planted on our poorest soils that are unprofitable for other crops. Such land can be bought cheap. A man, say 30 years of age, could plant 50,000 seedlings and by the time he is 45 years old be worth $50,000. And practically all the expense he would incur would be the cost of planting and taxes. This seems almost fantastic but its true. A man would have to be making an enormous salary and be blessed with some very profitable investments to accumulate $50,000 in fifteen years. And if he let the timber stand for another ten years he would probably be worth $100,000.

Big timber and pulpwood interests realize this and are acting upon it. Other landowners who have lands that are unprofitable for crops would do well to investigate this and there are many of them in this county.

A farmer told us last week that his timber had saved him financially several times. That the last few years had been unprofitable for him and that he had sold timber to recoup his losses and to keep him in business. He is now planting pine seedlings.

The practice of growing timber in this county is not near as hazardous as it was in the past due to the inauguration of our county forestry unit which provides protection from forest fires. Fire used to be an almost unsurmountable hazard and stopped many from the venture. With ordinary precaution and the aid provided by the county forestry unit this hazard has been practically eliminated.

If you have the land investigate tree farming and order your seedlings in time for next season's plantings. Some day you may be mighty glad you did.

Deserved Honor to Worthy Georgian

From—(Atlanta) METROPOLITAN HERALD

The selection of Griffin Daily News Editor Quimby Melton, Jr., by the County Commissioners Association of Georgia for its "Citizen of the Year" award is a fitting and deserving tribute to one of the state's most brilliant young leaders.

Editor Melton has been active in all worthwhile civic and political affairs not only of his own community, but in state affairs as well.

He is the vice president of the Georgia Press Association, a member of the State Study Commission and is active in the work of the Democratic party. This is just part of the contribution he is making on the state level.

His associates in the Georgia Press take particular pride in his accomplishments and in this latest deserved honor which has come to a member of their profession.

The award could not have been made to a more deserving citizen and we join his host of friends in congratulation not only Mr. Melton, but the County Commissioners. In honoring him, they have honored themselves.

fect of treaties; and (2) SJRes. 2, the Byrd-Bridges proposal to limit Congressional appropriations to a sum no greater than estimated federal revenues, except in time of war or national emergency.

These proposals are sound. If adopted—and they will be adopted if the people are given an opportunity to approve them—they will preserve and strengthen the rights reserved in the Constitution to the States or to the people. The Bricker and the Byrd-Bridges amendments must be adopted if we are to defeat the efforts of those whose sole aim is to impose their will upon the American people.

A Southern Principle

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When the Confederate States surrendered their army on April 26, 1865, it seemed possible that much of the tradition and principles for which the War Between the States was fought would pass into oblivion. Decades after that war, it was often interpreted by some ignorant persons as a battle which was fought to terminate slavery on American soil. The informed student of American history realizes, however, that the issues in the War Between the States centered around a major principle.

In 1861 men of the highest intellectual and political caliber recognized the fact that overfederalization posed a threat to the democratic and republican status of the United States. So strongly was the thinking defended along this line that the South was forced to remove itself from the Federal Union which it viewed as an overconcentration of political strength detrimental to states' rights. The leadership convinced of this undesirable political condition had no alternative but secession to defend its position. One of the most destructive wars of all times was waged largely due to the desire of the North to uphold a position opposed to states' rights. The surrender of the Confederacy therefore did not represent either defeat for the South or victory for the North, because the struggle for states' rights continues to this day.

It has become increasingly evident that overconcentration of power in Washington is unacceptable to a majority of Americans. Indeed, in our present circumstances, there are many factions in the Nation outside the South that view Federal usurpation of power as politically wrong. The philosophy of the South in defense of States' Rights is gaining increased support among thinking Americans. It remains for the Southland to honor its noble men and women who suffered and died for this principle. Each Confederate Memorial Day, we are reminded again of their sacrifices. The occasion should also remind us of the wisdom and the foresight of the Founding Fathers who fought and died for the cherished constitutional principle of division of powers. Even though threatened today, this principle remains one of the vital aspects of American freedom in contrast with the evil of communism.

N. C. Senator Raps Supreme Court In Talk Before Harvard Law Group

(Continued from Page 1)

ables a judge to lay aside personal notions of what the law ought to be and to base his decisions on established legal precedents and rules.

Following is a partial text of Sen. Ervin's remarks:

"Something serious has been happening to the law of the land and the supposed sovereignty of the states. I propose to talk to you briefly about it.

"My endeavor to tell the truth must begin with the American Constitutional Convention of 1787.

"The men who composed the American Constitutional Convention of 1787 comprehended in full measure the everlasting political truth that no man or set of men can be safely trusted with governmental power of an unlimited nature. In consequence, they were determined, above all things to establish a government of laws and not of men.

"To prevent the exercise of arbitrary power by the Federal Gov-

PROVISIONS LOOKS TO AN INDISSOLUBLE UNION, COMPOSED OF INDESTRUCTIBLE STATES."

"In their other utilization of the doctrine of the separation of powers, the members of the Convention of 1787 vested the power to make laws in the Congress, the power to execute laws in the President, and the power to interpret laws in the Supreme Court of the United States and such inferior courts as the Congress might establish. Moreover, they declared, in essence, that the legislative, the executive, and the judicial powers of the Federal Government should forever remain separate and distinct from each other.

* * *

"The members of the Convention of 1787 did not put their sole reliance upon the doctrine of the separation of governmental powers in their effort to forestall the exercise of arbitrary power by the Federal Government. They balanced the President's power to veto the acts of Congress against the power of Congress to legislate, and they balanced the power of Congress over the purse against the President's power as Commander and Chief of the Army and Navy. They made the Supreme Court of the United States independent of the President and the Congress by giving its judges life tenure during good behavior and by providing that their compensation should not be diminished during their continuance in office. They failed, however, to place in the Constitution any provisions to restrain any abuse of its judicial powers by the Supreme Court of the United States.

"This significant omission was not overlooked at the time. Elbridge Gerry, a delegate from Massachusetts, asserted:

> "There are no well defined limits of the Judiciary Powers, they seem to be left as a boundless ocean, that has broken over the chart of the Supreme Lawgiver, **thus far shall thou go and no further**, and as they cannot be comprehended by the clearest capacity, or the most sagacious mind, it would be an Herculean labour to attempt to describe the dangers with which they are replete."

"George Mason, a delegate from Virginia, made this more specific objection:

> "The judiciary of the United States is so constructed and extended as to absorb and destroy the judiciaries of the several states . . ."

Others declared, in substance, that under the Constitution the decisions of the Supreme Court of the United States would "not be in any manner subject to . . . revision or correction"; that "the power of construing the laws" would enable the Supreme Court of the United States "to mould them into whatever shape it" should "think proper"; that the Supreme Court of the United States could "substitute" its "own pleasure" for the law of the land; and that the "errors and usurpations of the Supreme Court of the Unit-

them; and it will readily be conceived, from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence, it is that there can be but few men in . . . society, who will have sufficient skill in the laws to qualify them for the station of Judges."

"By these remarks, Hamilton assured the several States that men selected to sit upon the Supreme Court of the United States would be able and willing to subject themselves to the restraint inherent in the judicial process. Experience makes this proposition indisputable: Although one may possess a brilliant intellect and be actuated by lofty motives, he is not qualified for the station of a judge in a government of laws unless he is able and willing to subject himself to the restraint inherent in the judicial process.

"What is the restraint inherent in the judicial process? The answer to this query appears in the statements of Hamilton. The restraint inherent in the judicial process is the mental discipline which prompts a qualified occupant of a judicial office to lay aside his personal notion of what the law ought to be, and to base his decision on established legal precedents and rules.

"How is this mental discipline acquired? The answer to this question likewise appears in the statements of Hamilton. This mental discipline is ordinarily the product of long and laborious legal work as a practicing lawyer, or long and laborious judicial work as a judge of an appellate court or a trial court of general jurisdiction. It is sometimes the product of long and laborious work as a teacher of law. It cannot be acquired by the occupancy of an executive or legislative office. And, unhappily, it can hardly be acquired by those who come or return to the law in late life after spending most of their mature years in other fields of endeavor.

"The reasons why the mental discipline required to qualify one for a judicial office is ordinarily the product of long and laborious work as a practicing lawyer, or as an appellate judge, or as a judge of a court of general jurisdiction are rather obvious. Practicing lawyers and judges of courts of general jurisdiction perform their functions in the workaday world where men and women live, move and have their being. To them, law is destitute of social value unless it has sufficient stability to afford reliable rules to govern the conduct of people, and unless it can be found with reasonable certainty in established legal precedents. An additional consideration implants respect for established legal precedents in the minds of

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N. C. Senator Raps U. S. High Court

(Cont'd from Page 2)

judges in courts of general jurisdiction and all appellate judges other than those who sit upon the Supreme Court of the United States. These judges are accustomed to have their decisions reviewed by higher courts and are certain to be reminded by reversals that they are subject to what Chief Justice Bleckley of the Supreme Court of Georgia called "the fallibility which is inherent in all courts except those of last resort", if they attempt to substitute their personal notions of what they think the law ought to be for the law as it is laid down on established legal precedents.

"The States accepted as valid Alexander Hamilton's positive assurance that men chosen to serve on the Supreme Court of the United States would subject themselves to the restraint inherent in the judicial process, and were thereby induced to ratify the Constitution notwithstanding the omission from that instrument of any express provision protecting the other branches of the Federal Government, the States, or the people against the arbitrary exercise of its judicial power by the Supreme Court.

"For several generations next succeeding its utterance, the people of America had no reason to doubt the accuracy of Alexander Hamilton's assurance. With rare exceptions, the Presidents selected for membership upon the Supreme Court of the United States men who had long and laboriously participated in the administration of justice either as practicing lawyers or as judges of State Courts or as judges of the Federal Courts inferior to the Supreme Court. As a consequence, the overwhelming majority of the men called to service upon the Supreme Court were able and willing to subject themselves to the restraint inherent in the judicial process and to perform their tasks in the light of the principle that it is the duty of the judge to interpret the law, not to make it.

"I was taught in my youth to repose an absolute confidence in the Supreme Court by my father, an active practitioner of law in North Carolina for 65 years, who was accustomed to refer to the Supreme Court with reverential awe. He used to say that this tribunal would administer justice according to law even though the heavens fell.

"I regret to say, however, that the course of the Supreme Court of the United States in recent years has been such as to cause me to ponder the question whether fidelity to fact ought not to compel us to remove from the portal of the building which houses it the majestic words, "Equal Justice Under Law", and to substitute for them the superscription, **"Not justice under law, but justice according to the personal notions of the temporary occupants of this building"**. In making this statement, I reveal my acceptance of this observation made by the late Justice Robert H. Jackson in BROWN v ALLEN: **"But I know of no way that we can have equal justice under the law except we have some law".**

* * *

"Candor compels the confession that on many occasions during recent years the Supreme Court has to all intents and purposes usurped the power of the Congress and the States to amend the Constitution. This abuse of power was made manifest even before the decision in BROWN v BOARD OF EDUCATION, which repudiates solely upon the basis of psychology and sociology the interpretation placed upon the Fourteenth Amendment in respect to racial segregation by Federal and

Court held, as the late Justice Jackson asserted in his dissenting opinion, that "settled family relationships may be destroyed by a procedure that we would not recognize if the suit were one to collect a grocery bill."

"Recent decisions make it manifest that the Supreme Court has usurped the power to nullify acts of Congress. Perhaps the most glaring of these decisions is GIROUARD v UNITED STATES, where the Court overruled three previous decisions and a subsequent confirming act of Congress simply because a majority of its members did not believe that Congress had exercised its legislative power wisely in denying the privilege of citizenship to aliens who were unwilling to bear arms in defense of this country. To be sure, the majority of the Court did not say that it thought that Congress had legislated unwisely. But a statement to this effect would have been a far better reason for its decision than any of those it gave.

"In addition to its revolutionary decisions on constitutional and statutory subjects, the Supreme Court of the United States has substantially impaired the doctrine of **stare decisis** and the stability of the law of the land which this doctrine formerly insured by overruling, repudiating, or ignoring its established precedents of earlier years. Former Justice Owen J. Roberts, a recent member of the Court, made this comment in this

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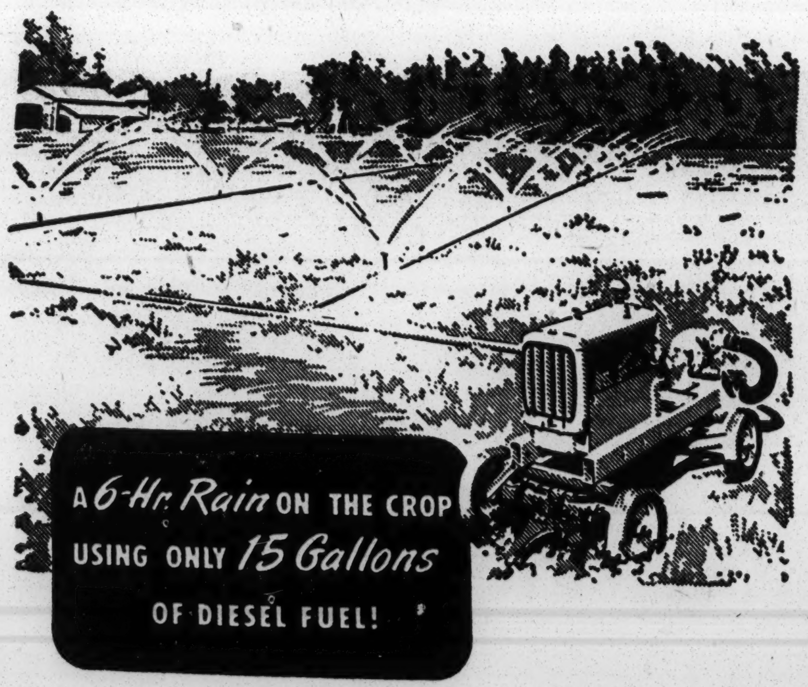
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temporary occupants of this building". In making this statement, I reveal my acceptance of this observation made by the late Justice Robert H. Jackson in BROWN v ALLEN: "But I know of no way that we can have equal justice under the law except we have some law".

* * *

"Candor compels the confession that on many occasions during recent years the Supreme Court has to all intents and purposes usurped the power of the Congress and the States to amend the Constitution. This abuse of power was made manifest even before the decision in BROWN v BOARD OF EDUCATION, which repudiates solely upon the basis of psychology and sociology the interpretation placed upon the Fourteenth Amendment in respect to racial segregation by Federal and State Courts, the Congress itself, and the Executive branches of the Federal and State Governments throughout the preceding 86 years. Time does not permit me to cite all the cases supporting my present contention. I mention only one, namely, WILLIAMS v NORTH CAROLINA, where the majority of the Court altered the meaning of the full faith and credit clause of the Constitution by overruling the holding of HADDOCK v HADDOCK to the effect that a State Court, even of the plaintiff's domicile, could not render a judgment of divorce that would be entitled to Federal enforcement in other States against a non-resident who did not appear and was not personally served with process. In so doing, the majority of the

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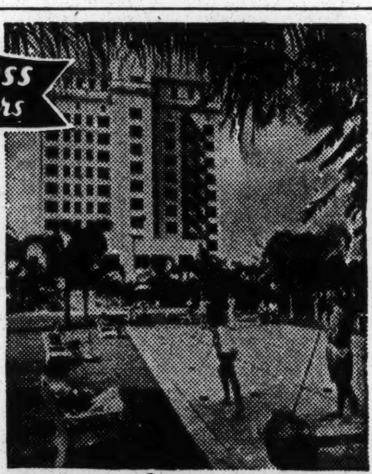

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(Cont'd from Page 3)

connection in his dissenting opinion in **SMITH v. ALLWRIGHT: "The reason for my concern is that the instant decision, overruling that announced about 9 years ago, tends to bring adjudications of this Tribunal into the same class as a restricted railroad ticket, good for this day and train only".**

"It must be added, moreover, that the Supreme Court has handed down numerous decisions which place limitations on the powers of the several states wholly inconsistent with the constitutional principle that the States of the Union are indestructible. This is particularly true in the field of criminal law. By their virtual abolition of the doctrine of res adjudicata, these decisions make it extremely difficult for the States to enforce their own criminal laws against their own citizens in their own courts.

"To satisfy these decisions, the States have been compelled to enact statutes providing for post-conviction hearings which, in plain English, permit the accused to try the State Court after the State Court has tried the accused.

"Other decisions of the Supreme Court sanction a practice by which the lowest court in the Federal Judicial System, to-wit, the United States District Court, can set at naught the decisions of the highest court of a State. This practice seems particularly ironic and indefensible in the light of Alexander Hamilton's explanation as to why the Supreme Court was invested with original jurisdiction in cases "in which a State shall be a party". His explanation was as follows: "In cases in which a State might happen to be a party, it would ill suit its dignity to be turned over to an inferior tribunal".

"In protesting against this practice, I am not a lone voice crying in a legal wilderness. I hold in my hand a clipping taken from the New York Times for August 14, 1954, disclosing the fact that on the previous day the Chief Justices of the 48 States of the Union had unanimously proposed that the Congress should amend Federal Procedural Laws so as to curtail the power of lower Federal Courts to interfere with the administration of criminal justice in State Courts.

* * *

"The question naturally arises: Why does the Supreme Court of the United States prefer to make constitutions and laws rather than to interpret them?

"The answer to this question appears in the assurance which Alexander Hamilton gave to the States when he was urging them to ratify the Constitution. It is simply this: The majority of the members of the Supreme Court during recent years have been either unable or unwilling to subject themselves to the restraint inherent in the judicial process.

"When all is said, it is not surprising that this is so. The custom of past generations of appointing to membership upon the Supreme Court men who had worked long and laboriously in the administration of justice either as practicing lawyers or as State Judges, or as Judges of Federal Courts inferior to the Supreme Court, has been more honored of late in its breach than in its observance.

"All of the members of the Supreme Court are genial gentlemen of high attainments and significant accomplishments. But the majority of them have not worked either long or laboriously as practicing lawyers, or as State Judges or as Judges of the Federal Courts inferior to the Supreme Court. As a consequence, the majority of them have not undergone the mental discipline which enables a qualified occupant of a judicial office to lay aside his personal notions of what the law ought to be and to base his decisions on what the law has been declared to be in legal precedents.

"The writer of the Book of Proverbs said:

"There be three things which are too wonderful for me, yea, four which I know not: The way of an eagle in the air; the way of a serpent upon a rock; the way of a ship in the midst of the sea; and the way of a man with a maid."

"Experience is undoubtedly the most efficient teacher of all things. This being true, there is one thing more amazing and more incomprehensible than the four mysteries enumerated by the writer of the Book of Proverbs. It is this: Why do Presidents of the United States ignore the numerous servants of the law who have performed years of devoted judicial service on State Courts and on Federal Courts inferior to the Supreme Court when they are called upon to make appointments to the Supreme Court of the United States?

"These facts are astounding:

1. No member of the Supreme Court as it is now constituted, ever served as a judge of a court of general jurisdiction, either State or Federal.

2. No member of the Supreme Court as it is now constituted, ever served as a judge upon an appellate court in any one of the forty-eight states; and

3. Only two of the nine members of the Supreme Court as it is now constituted, ever served as an appellate judge on any Federal Court inferior to the Supreme Court before he was elevated to his present office. Moreover, few of them have devoted their major efforts to the actual practice of law.

"It is high time for the Bench and the Bar and the people of America to ponder the question whether the Constitution of the United States ought to be amended so as to make it certain that in the future men will be selected for service upon the Supreme Court because of their possession of what Alexander Hamilton called **"those qualifications which fit men for the station of judges"**, and because of their ability and willingness to subject themselves to the restraint inherent in the judicial process.

"It may be that in making these observations, I am merely enacting the role of a fool who rushes in where discreet angels fear to tread. If so, I can plead in extenuation of my folly that I love the American Constitution and know that an indissoluble Union composed of indestructible States cannot endure if our government of laws does not survive."

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The said company has reinsured with National Bankers Life Insurance Company of Dallas, Texas, and Sovereign States Insurance Company of Nashville, Tennessee, all policies issued by it in the State of Georgia, and has satisfied and paid all losses and claims of its policyholders therein, and on the 15th day of May, 1955, will make application to Hon. Zack D. Cravey, Insurance Commissioner of the State of Georgia, for leave to withdraw from the State Treasury the bonds deposited by the above-named company in the said Treasury as a guarantee fund for the protection of Georgia policyholders.

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